

MANUBHAI PATEL, )  
)  
Plaintiff, )  
)  
vs. ) No. 4:10-CV-1039 (CEJ)  
)  
JANET NAPOLITANO, Secretary of )  
Homeland Security, et al., )  
)  
Defendants. )

Before the Court is the defendants' motion to dismiss this action for lack of subject-matter jurisdiction. The plaintiff has not responded to the motion, and the time allowed for doing so has passed.

The defendants ask that this action be dismissed with prejudice and that plaintiff be required to bear the costs. Rule 41(b), Fed.R.Civ.P., specifically provides that an involuntary dismissal based upon lack of subject matter jurisdiction shall not be an adjudication on the merits unless the Court specifies so in the dismissal order. Further, “[a] district court is generally barred from dismissing a case with prejudice if it concludes subject matter jurisdiction is absent.” County of Mille Lacs v. Benjamin, 361 F.3d 460 (8th Cir. 2004) (citing Ahmed v. United States, 147 F.3d 791, 797 (8th

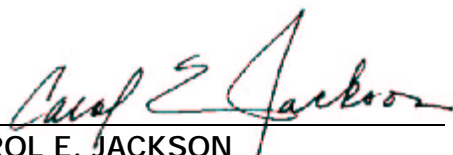
Cir.1998), internal citations admitted). With respect to an award of costs, defendants have also not shown that they are the prevailing parties which, under Rule 54(d), Fed.R.Civ.P., would entitle them to recover costs.

Accordingly,

**IT IS HEREBY ORDERED** that the defendants' motion to dismiss [Doc. #19] is **granted**.

**IT IS FURTHER ORDERED** that the defendants' requests for dismissal with prejudice and for costs are **denied**.

**IT IS FURTHER ORDERED** that the defendants' third motion for extension of time to file an answer or other responsive pleading [Doc. #18] is **moot**.

  
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CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE

Dated this 15th day of December, 2010.